

By Representative Gannon

1 A bill to be entitled
2 An act relating to insurer rehabilitation and
3 liquidation; amending s. 631.001, F.S.;
4 providing interpretation, construction, and
5 purposes; providing a short title; amending s.
6 631.011, F.S.; providing additional
7 definitions; creating s. 631.025, F.S.;
8 specifying application to certain persons and
9 entities; creating s. 631.113, F.S.; providing
10 for tolling certain time limitations in certain
11 actions; amending s. 631.041, F.S.; entitling
12 the estate of an insurer to actual damages and
13 additional sanctions for certain injuries;
14 limiting application of certain time
15 restrictions; amending s. 631.141, F.S.;
16 vesting the Department of Insurance with
17 certain rights as receiver; amending s.
18 631.154, F.S.; including certain costs and
19 expenses of the department in costs and
20 expenses entitled to be recovered by the
21 receiver under certain circumstances; creating
22 s. 631.156, F.S.; providing for investigations
23 by the department preliminary or incidental to
24 receivership proceedings; providing department
25 powers; prohibiting hindering or withholding
26 information from the department in such
27 investigations; authorizing the department to
28 provide certain information in such
29 investigations; granting the department certain
30 discretionary powers; creating s. 631.157,
31 F.S.; imposing liability on certain persons or

1 entities for certain actions; specifying
2 amounts of damages; providing construction;
3 providing costs and expenses entitled to be
4 recovered by the receiver under certain
5 circumstances; providing a time certain for
6 bringing certain actions; creating s. 631.3995,
7 F.S.; providing procedures and requirements for
8 closing an estate; providing for deposit of
9 certain assets into the Closed Estate Fund
10 Trust Account; providing for uses of such
11 account; providing for reopening certain
12 proceedings; amending s. 631.54, F.S.; revising
13 a definition; creating s. 817.2341, F.S.;
14 providing criminal penalties for certain
15 activities; amending ss. 626.9541 and 631.041,
16 F.S.; correcting cross references; providing an
17 effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Section 631.001, Florida Statutes, is
22 amended to read:

23 (Substantial rewording of section.

24 See s. 631.001, F.S., for present text.)

25 631.001 Interpretation; construction; purpose.--

26 (1) The underlying purposes and policies of the
27 provisions of this part, which are integral elements of the
28 regulation of the business of insurance and are of vital
29 public interest and concern, are to:

30 (a) Protect the interests of insureds, claimants,
31 creditors, and the public.

1 (b) Provide a comprehensive scheme for the
2 receivership of insurers.

3 (c) Maximize the uniformity of the insurer
4 receivership laws in all states.

5 (d) Make more efficient the administration of insurer
6 receiverships on an interstate and international basis.

7 (e) Provide prompt correct measures for any
8 potentially dangerous condition in an insurer.

9 (f) Implement improved methods for rehabilitating
10 insurers, which methods involve the cooperation and management
11 expertise of the insurance industry.

12 (g) Enhance the efficiency and economy of liquidation
13 through clarification and specification of the law to minimize
14 legal uncertainty and litigation.

15 (h) Lessen the problems of interstate rehabilitation
16 and liquidation of an entity subject to the provisions of this
17 part by facilitating cooperation between states in the
18 liquidation process and by extension of the scope of personal
19 jurisdiction over debtors of the insurer outside this state.

20 (i) Establish a system which equitably apportions any
21 unavoidable loss.

22 (j) Maximize recovery of assets for the benefit of the
23 insurer, its policyholders, its creditors, and its estate
24 without diminution of value occasioned by the expenses of
25 collection and recovery, by shifting such expenses to the
26 parties holding such assets.

27 (2) It is the intent of the Legislature that this part
28 be interpreted wherever possible to make uniform the law of
29 those states which in substance and effect enact the National
30 Association of Insurance Commissioners Insurers Rehabilitation
31

1 and Liquidation Model Act or the Uniform Insurers Liquidation
2 Act.

3 (3) This part shall not be interpreted to limit the
4 powers granted the department by laws or rules other than
5 under this part; nor to prevent the department in its capacity
6 as administrator, conservator, rehabilitator, receiver,
7 liquidator, or similar capacity from pursuing claims for
8 damages or other recoveries on behalf of the insurer, its
9 policyholders, its creditors, and its estate; nor to allow any
10 prior wrongful or negligent actions of company management, or
11 any alleged negligent or erroneous action by the department in
12 its regulatory capacity, to be asserted as a defense to a
13 claim by the department in its representative capacity, under
14 a theory of estoppel, comparative fault, intervening cause,
15 proximate cause, or otherwise.

16 (4) This part shall be liberally construed to effect
17 the purposes stated in subsection (1) and shall specifically
18 authorize the department in its capacity as administrator,
19 conservator, rehabilitator, receiver, liquidator, or similar
20 capacity to pursue any actions for damages or other recoveries
21 on behalf of the insurer, its policyholders, its creditors,
22 and its estate.

23 (5) This part may be cited as the "Insurers
24 Rehabilitation and Liquidation Act."

25 Section 2. Section 631.011, Florida Statutes, is
26 amended to read:

27 631.011 Definitions.--For the purpose of this part,
28 the term:

29 (1) "Affiliate" means any entity which exercises
30 control over or is controlled by the insurer, directly or
31 indirectly through:

1 (a) Equity ownership of voting securities;
2 (b) Common managerial control; or
3 (c) Collusive participation by the management of the
4 insurer and affiliate in the management of the insurer or the
5 affiliate.

6 (2) "Ancillary state" means, any state other than a
7 domiciliary state.

8 (3) "~~Assets,~~ ~~as used in subsections (8)-(10),~~ means
9 only allowed assets as defined in chapter 625. However, after
10 entry of an order of conservation, rehabilitation, or
11 liquidation, for the purpose of collection or marshaling by
12 the department under this part, the term "assets" shall be
13 construed liberally and shall include, but not be limited to,
14 "property" of the insurer as defined in this section, funds
15 improperly removed or diverted either directly or indirectly
16 from the insolvent insurer, and any property into which those
17 funds may have been converted even if such property would not
18 otherwise be considered property of the insolvent insurer.

19 (4) "Bona fide holder for value" means a holder who,
20 while not possessing information that would lead a reasonable
21 person in the holder's position to believe that the insurer is
22 financially impaired, and while unaware of the imminence or
23 pendency of any receivership proceeding against the insurer,
24 has, in the exercise of reasonable business judgment,
25 exchanged his or her own funds, assets, or property for funds,
26 assets, or property of the insurer having an equivalent market
27 value.

28 (5)~~(4)~~ "Court" refers to the circuit court in which
29 the receivership proceeding is pending.

30 (6)~~(5)~~ "Delinquency proceeding" means any proceeding
31 commenced against an insurer pursuant to this chapter for the

1 purpose of liquidating, rehabilitating, reorganizing, or
2 conserving such insurer.

3 (7)~~(6)~~ "Domiciliary state" means the state in which an
4 insurer is incorporated or organized or, in the case of an
5 insurer incorporated or organized in a foreign country, the
6 state in which such insurer, having become authorized to do
7 business in such state, has, at the commencement of a
8 delinquency proceeding, the largest amount of its assets held
9 in trust and assets held on deposit for the benefit of its
10 policyholders or policyholders and creditors in the United
11 States; and any such insurer is deemed to be domiciled in such
12 state.

13 (8) "Fair consideration" means that consideration
14 which is given for property or assets of an insurer when, in
15 exchange for the property or assets and in good faith,
16 property is conveyed, services are rendered, or an enforceable
17 obligation not invalidated by the receivership proceedings is
18 created, having a value to the insurer of not less than the
19 value of the property or assets given in exchange.

20 (9)~~(7)~~ "Foreign country" means territory not in any
21 state.

22 (10)~~(8)~~ "General assets" means all property, real,
23 personal, or otherwise, not specifically mortgaged, pledged,
24 deposited, or otherwise encumbered for the security or benefit
25 of specified persons or a limited class or classes of persons,
26 and as to such specifically encumbered property the term
27 includes all such property or its proceeds in excess of the
28 amount necessary to discharge the sum or sums secured thereby.
29 Assets held in trust and assets held on deposit for the
30 security or benefit of all policyholders or all policyholders
31

1 and creditors in the United States shall be deemed general
2 assets.

3 (11) "Good faith," as applied to a transferee or
4 transferor under this part, means honesty in fact and
5 intention and includes the exercise of reasonable business
6 judgment, together with the absence of information that would
7 lead a reasonable person in the same position to know that the
8 insurer is financially impaired or insolvent and together with
9 the absence of knowledge regarding the imminence or pendency
10 of any receivership proceeding against the insurer.

11 (12)~~(9)~~ "Impairment of capital" means that the minimum
12 surplus required to be maintained in s. 624.408 has been
13 dissipated and the insurer is not possessed of assets at least
14 equal to all its liabilities together with its total issued
15 and outstanding capital stock, if a stock insurer, or the
16 minimum surplus or net trust fund required by s. 624.407, if a
17 mutual, reciprocal, or business trust insurer.

18 (13)~~(10)~~ "Impairment of surplus" means that the
19 surplus of a stock insurer, the additional surplus of a mutual
20 or reciprocal insurer, or the additional net trust fund of a
21 business trust insurer does not comply with the requirements
22 of s. 624.408.

23 (14)~~(11)~~ "Insolvency" means that all the assets of the
24 insurer, if made immediately available, would not be
25 sufficient to discharge all its liabilities or that the
26 insurer is unable to pay its debts as they become due in the
27 usual course of business. When the context of any provision of
28 this code so indicates, insolvency also includes and is
29 defined as "impairment of surplus," as defined in subsection
30 (13)~~(9)~~, and "impairment of capital," as defined in subsection
31 (12)~~(8)~~.

1 ~~(15)(12)~~ "Insurer," in addition to persons so defined
2 under s. 624.03, also includes persons purporting to be
3 insurers or organizing, or holding themselves out as
4 organizing, in this state for the purpose of becoming insurers
5 and all insurers who have insureds resident in this state.

6 ~~(16)(13)~~ "Liabilities," as used in subsections (12)
7 and (14)(8)-(10), means all liabilities, including those
8 specifically required in s. 625.041.

9 ~~(17)(14)~~ "Person" includes natural persons,
10 corporations, partnerships, trusts, estates, and sole
11 proprietorships.

12 (18) "Property," when applied to an insolvent entity,
13 includes all right, title, and interest of the insolvent
14 entity whether legal or equitable, tangible or intangible, or
15 choate or inchoate, and includes choses in action, contract
16 rights, and any other interest recognized under the laws of
17 this state. When an order of conservation, rehabilitation, or
18 liquidation is entered, such property also includes
19 entitlements that existed prior to the entry of the order and
20 those that may arise by operation of the provisions of this
21 chapter or other provisions of law allowing the department to
22 avoid prior transfers or otherwise bring property into the
23 receivership estate, whether or not such entitlements could
24 have been asserted by the insolvent entity prior to the order.
25 The term "property" also includes all records and data,
26 however stored, including, but not limited to, claims and
27 claim files, application files, litigation files, premium
28 records, rate books, underwriting manuals, personnel records,
29 financial records, or other information relating to an
30 insolvent insurer within the possession, custody, or control
31 of a managing general agent, third-party administrator,

1 management company, accountant, attorney, affiliate, or other
2 person.

3 ~~(19)(15)~~ "Receiver" means a receiver, liquidator,
4 rehabilitator, or conservator, as the context may require.

5 ~~(20)(16)~~ "Reciprocal state" means any state other than
6 this state in which in substance and effect the provisions of
7 the Insurers Rehabilitation and Liquidation Act are in force,
8 including the provisions requiring that the commissioner of
9 insurance or equivalent insurance supervisory official be the
10 receiver of a delinquent insurer.

11 ~~(21)(17)~~ "Secured claim" means any claim secured by
12 mortgage, trust deed, pledge, deposit as security, escrow, or
13 otherwise but does not include a special deposit claim, a
14 claim against general assets, or a claim based on mere
15 possession. The term also includes a claim which more than 4
16 months before the commencement of a delinquency proceeding in
17 the state of the insurer's domicile has become a lien upon
18 specific assets by reason of judicial process.

19 ~~(22)~~ "Single business enterprise," for purposes of
20 this part, means an insurer that has operated together with
21 affiliated or related persons or entities so as to create a
22 structure of controls, debts, obligations, services, or
23 contracts flowing to and from the insurer in such a way that,
24 in the view of the department, efficient administration of the
25 receivership requires inclusion of the related entities.

26 ~~(23)(18)~~ "Special deposit claim" means any claim
27 secured by a deposit made pursuant to statute for the security
28 or benefit of a limited class or classes of persons, but not
29 including any general assets.

30 ~~(24)(19)~~ "State" is as defined in s. 624.08.
31

1 Section 3. Section 631.025, Florida Statutes, is
2 created to read:

3 631.025 Persons and entities subject to this
4 part.--The receivership proceedings authorized by this part
5 may be initiated against, and the receivership court may
6 exercise jurisdiction over, any person who is an insurer and
7 against any person whose inclusion is necessary for the
8 purposes of this part whether or not said person would
9 otherwise be an insurer, including, but not limited to, the
10 following:

11 (1) A person who is transacting, or has transacted,
12 insurance business in or from this state, and against whom
13 claims arising from that business may exist now or in the
14 future.

15 (2) A person who purports to transact an insurance
16 business in this state, and any person or entity who acts as
17 an insurer, transacts insurance, or otherwise engages in
18 insurance activities in or from this state, with or without a
19 certificate of authority or proper authority from the
20 department.

21 (3) An insurer who has insureds resident in this
22 state.

23 (4) All other persons organized or in the process of
24 organizing with the intent to transact an insurance business
25 in this state.

26 (5) Affiliates, parent corporations, subsidiary
27 corporations, agents, managing general agents, brokers,
28 premium finance companies, insurers, insurance holding
29 companies, and all other risk-bearing or non-risk-bearing
30 entities engaged in any aspect of the business of insurance,
31 whether or not such entities are licensed to engage in the

1 business of insurance in this state, if such person or entity
2 has done business with or is, at the time of the filing, doing
3 business with an insurer against which a receivership
4 proceeding has been or is being filed under this part.

5 (6) Any corporation that directly or indirectly owns
6 10 percent or more of the stock of a Florida domestic insurer.

7 (7) Any entity forming part of a single business
8 enterprise with the insurer.

9 (8) Any other person or entity that is made subject to
10 the provisions of this part.

11 Section 4. Section 631.113, Florida Statutes, is
12 created to read:

13 631.113 Extension of time.--

14 (1) The running of any statute of limitations as to
15 any claims brought by the administrator, conservator,
16 rehabilitator, receiver, or liquidator, or an official or
17 agency exercising powers pursuant to this chapter seeking
18 damages or other recoveries on behalf of an insurer, its
19 policyholders, its creditors, or its estate, shall be tolled
20 for a period of 4 years from the entry of an order placing the
21 administrator, conservator, rehabilitator, receiver,
22 liquidator, or similar official or agency over the insurer,
23 provided, if the delinquency proceedings brought pursuant to
24 this chapter against the insurer terminate in less than 4
25 years, such tolling shall cease at the time when the
26 proceedings are finally concluded, including all appeals
27 therefrom. Further, the right of action does not accrue and
28 the limitations period for any such action does not run during
29 the time when the insurer is controlled by parties acting
30 contrary to the company's interests or when the facts giving
31 rise to such claim are fraudulently concealed from regulatory

1 authorities or from any members of company management. The
2 provisions of chapter 95 shall be construed so as to be
3 consistent with the provisions of this section. The receiver
4 may institute any action or proceeding on behalf of the estate
5 of the insurer while any statute of limitation is tolled
6 pursuant to this section. The tolling shall be in addition to
7 any other applicable tolling provision.

8 (2) For actions not covered by subsection (1), if any
9 unexpired time period is fixed, by any agreement or in any
10 proceeding, for doing any act for the benefit of the estate,
11 the receiver shall have 180 days, or such longer period as the
12 receivership court may allow for good cause shown, from the
13 entry of the order of rehabilitation or liquidation to perform
14 the act.

15 Section 5. Subsections (6) and (7) are added to
16 section 631.041, Florida Statutes, to read:

17 631.041 Automatic stay; relief from stay;
18 injunctions.--

19 (6) The estate of an insurer that is injured by any
20 willful violation of a stay provided by this section shall be
21 entitled to actual damages, including costs and attorney's
22 fees, and, in appropriate circumstances, the receivership
23 court may impose additional sanctions.

24 (7) No statute of limitations or defense of laches
25 shall run with respect to any action by or against an insurer
26 between the filing of a petition for conservation,
27 rehabilitation, or liquidation against an insurer and the
28 order granting or denying that petition. If the petition is
29 denied, any action against the insurer that might have been
30 commenced when the petition was filed may be commenced for at
31 least 60 days after the order denying such relief.

1 Section 6. Subsections (6), (7), (8), and (9) of
2 section 631.141, Florida Statutes, are renumbered as
3 subsections (7), (8), (9), and (10), respectively, and a new
4 subsection (6) is added to said section to read:

5 631.141 Conduct of delinquency proceeding; domestic
6 and alien insurers.--

7 (6) The department as receiver is vested with and may
8 assert all rights belonging to policyholders, creditors, and
9 the estate as well as all rights of the entity or entities in
10 receivership, except to the extent that an individual claim is
11 personal and unique to that claimant and recovery thereon
12 could not inure to the benefit of the estate or to other
13 claimants.

14 Section 7. Paragraph (d) of subsection (6) of section
15 631.154, Florida Statutes, is amended to read:

16 631.154 Funds or other property in the possession of
17 third person.--

18 (6) Should the receiver be successful in establishing
19 its claim or any part thereof, the receiver shall be entitled
20 to recover judgment for the following:

21 (d) All costs, investigative and other expenses, which
22 include the department's in-house staff and staff attorney's
23 expenses, costs, and salaries, expended in necessary to the
24 recovery of the property or funds, and reasonable attorney's
25 fees.

26 Section 8. Section 631.156, Florida Statutes, is
27 created to read:

28 631.156 Investigation by the department.--

29 (1) Preliminary or incidental to a petition for
30 receivership proceedings, the department may, and if appointed
31 receiver shall, undertake a full investigation to determine

1 the causes and reasons for the insolvency, the discovery and
2 location of assets to be recovered, the recovery of such
3 assets, whether the filing of false statements with the
4 department contributed to the insolvency, and, in conjunction
5 with the department's Division of Insurance Fraud or any other
6 appropriate agency of state or federal government, whether any
7 law of this state, any other state, or the Federal Government
8 relating to the solvency of the insurer has been violated. In
9 the furtherance of such investigation, the department may:

10 (a) Examine and review any and all documents that are
11 reasonably calculated to disclose or lead to the disclosure of
12 the causes and reasons for the insolvency, the discovery and
13 location of assets to be recovered, the recovery of such
14 assets, the truth or falsity of statements filed with the
15 department, and whether any law of this state, any other
16 state, or the Federal Government has been violated.

17 (b) Take statements or depositions under oath of any
18 person whose testimony is reasonably calculated to disclose or
19 lead to the disclosure of the causes and reasons for the
20 insolvency, the discovery of and location of assets to be
21 recovered, the recovery of such assets, the truth or falsity
22 of statements filed with the department, and whether any law
23 of this state, any other state, or the Federal Government has
24 been violated.

25 (c) Request the court having jurisdiction over the
26 receivership proceedings to issue any necessary subpoenas.

27 (d) Examine and review the books, records, and
28 documents of any affiliate, controlling person, officer,
29 director, manager, trustee, agent, adjuster, employee, or
30 independent contractor of any insurer or affiliate and any
31 other person who possesses any executive authority over, or

1 who exercises or has exercised any control over, any segment
2 of the affairs of the insurer or affiliate, to the extent such
3 examination is reasonably calculated to disclose or lead to
4 the disclosure of the causes and reasons for the insolvency,
5 the discovery and location of assets to be recovered, the
6 recovery of such assets, the truth or falsity of statements
7 filed with the department, and whether any law of this state,
8 any other state, or the Federal Government has been violated.

9 (2) The department shall not be hindered in its
10 investigation by virtue of the insurer's and the affiliates'
11 manner of doing business. If the insurer and any of its
12 affiliates have, at any time prior to the institution of any
13 type of receivership proceedings, commingled their operations,
14 operated as an integrated entity whether or not adjudged a
15 single business enterprise for purposes of the Florida
16 Insurance Code, filed a combined financial statement with any
17 governmental authority or published a combined financial
18 statement to any investor or customer, had common officers,
19 directors, managers, trustees, agents, adjusters, employees,
20 independent contractors, accountants, auditors, attorneys, or
21 other significant personnel whether or not said persons are
22 controlling persons or affiliates as defined in the Florida
23 Insurance Code, or operated in fact as a combined or
24 integrated entity to any degree, such persons or entities are
25 prohibited from withholding from the department any books,
26 records, documents, or testimony that would otherwise be
27 privileged had the insurer and its affiliates conducted their
28 business as unrelated entities.

29 (3) In its capacity as receiver, the department may
30 provide documents, books and records, other investigative
31 products, work product, and analysis, including copies of any

1 or all of the foregoing items, to the Division of Insurance
2 Fraud or any other appropriate agency of state or federal
3 government. The sharing of information, investigative
4 products, or analysis shall not waive any work product or
5 other privilege that would otherwise apply under common law,
6 chapter 119, or any other law.

7 (4) The department, as the court's receiver, is
8 granted the discretion to determine what books, records,
9 documents, or testimony would be reasonably calculated to
10 disclose or lead to the disclosure of the causes and reasons
11 for the insolvency, the discovery and location of assets to be
12 recovered, the recovery of the assets, the truth or falsity of
13 statements filed with the department, and whether any law of
14 this state or of the United States has been violated, subject
15 to the court's power to review such determination or appoint a
16 general master to review such determination. A party
17 asserting that any documents requested by the department under
18 this section are not subject to review, or that any particular
19 testimony may not be obtained, shall present such contention
20 by written motion to the receivership court within 10 days
21 after receipt of the request and shall be fully responsible
22 for the loss of any evidence which occurs after the department
23 first informs said party of its request therefor. The court
24 shall, as expeditiously as possible, determine whether the
25 department has abused its discretion in seeking such evidence
26 or testimony, with the objecting party having the burden of
27 proof. A party who fails to produce the requested evidence or
28 testimony without filing a proper timely objection, or who
29 having unsuccessfully asserted such objection fails thereafter
30 to furnish the evidence or testimony within the time provided
31 by the court or the department, shall be subject to the

1 contempt powers of the court, in addition to any other
2 applicable penalties which may be provided in the Florida
3 Insurance Code or other law.

4 Section 9. Section 631.157, Florida Statutes, is
5 created to read:

6 631.157 Civil action by the receiver.--

7 (1) Any person who is engaged in the business of
8 insurance or who acts as or is an officer, director, agent, or
9 employee of any person engaged in the business of insurance,
10 or is involved, other than as an insured or beneficiary under
11 a policy of insurance, in a transaction relating to the
12 conduct of affairs of such a business, and who willfully
13 embezzles, abstracts, purloins, converts, or misappropriates
14 any asset or property, including, but not limited to, moneys,
15 funds, premiums, credits, or other property of an insurer,
16 shall be liable to the department as receiver for the use and
17 benefit of an insolvent insurer's estate, creditors, and
18 policyholders, as follows:

19 (a) If such embezzlement, abstraction, purloining,
20 conversion, or misappropriation did not jeopardize the safety
21 and soundness of an insurer and was not a significant cause of
22 such insurer's being placed in conservation, rehabilitation,
23 or liquidation, such person shall be liable only for the full
24 amount of any asset embezzled, abstracted, purloined, or
25 misappropriated, plus prejudgment interest provided by law.

26 (b) If such embezzlement, abstraction, purloining,
27 conversion, or misappropriation jeopardized the safety and
28 soundness of an insurer or was a significant cause of such
29 insurer's being placed in conservation, rehabilitation, or
30 liquidation, such person shall be liable for triple the full
31 amount of any asset embezzled, abstracted, purloined,

1 converted, or misappropriated, plus prejudgment interest
2 provided by law on the original amount.

3 (2) Any person who is engaged in the business of
4 insurance or who acts as or is an officer, director, agent, or
5 employee of any person engaged in the business of insurance,
6 or is involved, other than as an insured or beneficiary under
7 a policy of insurance, in a transaction relating to the
8 conduct of affairs of such a business, and who, while having
9 actual knowledge or such constructive knowledge as should have
10 been obtained through reasonable inquiry by a person in such
11 position, knew of the falsity thereof, misreports, or makes
12 any false entry of material fact in any book, report, or
13 statement of an insurer to deceive such insurer, including any
14 officer, employee, or agent of such insurer, the department,
15 or any agent or examiner appointed by the department to
16 examine the affairs of such person or of the insurer,
17 concerning the financial condition or solvency of such
18 business, shall be liable to the department as receiver for
19 the use and benefit of an insolvent insurer's estate,
20 creditors, and policyholders, as follows:

21 (a) If such misreporting did not jeopardize the safety
22 and soundness of an insurer and was not a significant cause of
23 such insurer's being placed in conservation, rehabilitation,
24 or liquidation, such person shall be liable only for the full
25 amount of any asset misreported.

26 (b) If such misreporting jeopardized the safety and
27 soundness of an insurer or was a significant cause of such
28 insurer's being placed in conservation, rehabilitation, or
29 liquidation, such person shall be liable for triple the full
30 amount of any asset misreported.

31

1 (3) If the asset or property which has been
2 misreported, embezzled, abstracted, purloined, converted, or
3 misappropriated was reported to the department as being
4 available to the insurer as an admitted asset and such asset
5 is unavailable to the receiver for payment of the obligations
6 of the insurer at the time when a receivership proceeding is
7 instituted, the misreporting, embezzlement, abstraction,
8 purloining, conversion, or misappropriation shall be presumed
9 to have jeopardized the safety and soundness of the insurer
10 and to have been a significant cause of such insurer's being
11 placed in conservation, rehabilitation, or liquidation, with
12 the burden of proof on the defendants to show otherwise.

13 (4) If the receiver is successful in establishing a
14 claim under this section, the receiver shall be entitled to
15 recover all of its costs, investigative and other expenses,
16 which shall include the department's in-house staff and staff
17 attorney's expenses, costs, and salaries, expended in the
18 prosecution of the action, and reasonable attorney's fees.
19 The receiver shall be exempt from the provisions of s. 57.111.

20 (5) An action under this section may be brought at any
21 time before the expiration of 4 years after the entry of the
22 initial order of rehabilitation or liquidation under this part
23 but shall be filed before the time the receivership proceeding
24 is closed or dismissed.

25 Section 10. Section 631.3995, Florida Statutes, is
26 created to read:

27 631.3995 Closing of estate; Closed Estate Fund Trust
28 Account.--

29 (1) When all assets justifying the expense of
30 collection and distribution have been marshaled and
31 distributed under this part, the department shall petition the

1 court to terminate the liquidation proceedings and to close
2 the estate. The court may grant such other relief as may be
3 appropriate, including, but not limited to, a full discharge
4 of all liability and responsibility of the liquidator, the
5 reservation of assets for administrative expenses incurred in
6 the closing of the estate, and any other actions the
7 department feels necessary or appropriate for closing the
8 estate.

9 (2) Any remaining reserved assets that are provided
10 for in subsection (1) and that may not be practicably or
11 economically distributed to claimants shall be deposited into
12 a segregated account to be known as the Closed Estate Fund
13 Trust Account, if created by law. The department may use
14 moneys held in the account for paying the administrative
15 expenses of companies subject to this part that lack
16 sufficient assets to allow the department to perform its
17 duties and obligations under this part. An annual audit of the
18 Closed Estate Fund Trust Account shall be performed regardless
19 of its balance.

20 (3) The department may petition the court to reopen
21 the proceedings for good cause shown, including the marshaling
22 of additional assets, and the court may enter such other
23 orders as may be deemed appropriate.

24 Section 11. Subsection (3) of section 631.54, Florida
25 Statutes, is amended to read:

26 631.54 Definitions.--As used in this part:

27 (3) "Covered claim" means an unpaid claim, including
28 one of unearned premiums, which arises out of, and is within
29 the coverage, and not in excess of, the applicable limits of
30 an insurance policy to which this part applies, issued by an
31 insurer, if such insurer becomes an insolvent insurer after

1 October 1, 1970, and the claimant or insured is a resident of
2 this state at the time of the insured event or the property
3 from which the claim arises is permanently located in this
4 state. "Covered claim" shall not include any amount due any
5 reinsurer, insurer, insurance pool, or underwriting
6 association, as subrogation, contribution, indemnification,
7 ~~recoveries~~ or otherwise. Member insurers shall have no right
8 of subrogation against the insured of any insolvent member.

9 Section 12. Section 817.2341, Florida Statutes, is
10 created to read:

11 817.2341 Crimes by or affecting persons engaged in the
12 administration of any insurer or entity organized pursuant to
13 chapter 624 or chapter 641.--

14 (1)(a) Any person who makes a false entry of a
15 material fact in any book, report, or statement relating to a
16 transaction of an insurer or entity organized pursuant to
17 chapter 624 or chapter 641, intending thereby to deceive any
18 person about the financial condition or solvency of such
19 insurer or entity, commits a felony of the third degree,
20 punishable as provided in s. 775.082, s. 775.083, or s.
21 775.084.

22 (b) If such false entry of a material fact is made
23 with the intent to deceive any person as to the impairment of
24 capital, as defined in s. 631.011(12), of such insurer or
25 entity or is the significant cause of such insurer or entity
26 being placed in conservation, rehabilitation, or liquidation
27 by a court, the offense is a felony of the first degree,
28 punishable as provided in s. 775.082, s. 775.083, or s.
29 775.084.

30 (2)(a) Any person who knowingly makes a material false
31 statement or report to the department or any agent of the

1 department, or who knowingly and materially overvalues any
2 property in any document or report prepared to be presented to
3 the department or any agent of the department, commits a
4 felony of the third degree, punishable as provided in s.
5 775.082, s. 775.083, or s. 775.084.

6 (b) If such material false statement or report or such
7 material overvaluation is made with the intent to deceive any
8 person as to the impairment of capital, as defined in s.
9 631.011(12), of an insurer or entity organized pursuant to
10 chapter 624 or chapter 641, or is the significant cause of
11 such insurer or entity being placed in conservation,
12 rehabilitation, or liquidation by a court, the offense is a
13 felony of the first degree, punishable as provided in s.
14 775.082, s. 775.083, or s. 775.084.

15 Section 13. Paragraph (w) of subsection (1) of section
16 626.9541, Florida Statutes, is amended to read:

17 626.9541 Unfair methods of competition and unfair or
18 deceptive acts or practices defined.--

19 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR
20 DECEPTIVE ACTS.--The following are defined as unfair methods
21 of competition and unfair or deceptive acts or practices:

22 (w) Soliciting or accepting new or renewal insurance
23 risks by insolvent or impaired insurer prohibited; penalty.--

24 1. Whether or not delinquency proceedings as to the
25 insurer have been or are to be initiated, but while such
26 insolvency or impairment exists, no director or officer of an
27 insurer, except with the written permission of the Department
28 of Insurance, shall authorize or permit the insurer to solicit
29 or accept new or renewal insurance risks in this state after
30 such director or officer knew, or reasonably should have
31 known, that the insurer was insolvent or impaired. "Impaired"

1 includes impairment for capital or surplus, as defined in s.
2 631.011(12)~~(9)~~and(13)~~(10)~~.

3 2. Any such director or officer, upon conviction of a
4 violation of this paragraph, is guilty of a felony of the
5 third degree, punishable as provided in s. 775.082, s.
6 775.083, or s. 775.084.

7 Section 14. Paragraph (d) of subsection (1) of section
8 631.041, Florida Statutes, is amended to read:

9 631.041 Automatic stay; relief from stay;
10 injunctions.--

11 (1) An application or petition under s. 631.031
12 operates as a matter of law as an automatic stay applicable to
13 all persons and entities, other than the receiver, which shall
14 be permanent and survive the entry of an order of
15 conservation, rehabilitation, or liquidation, and which shall
16 prohibit:

17 (d) Any act to create, perfect, or enforce a lien
18 against property of the insurer, except that a secured claim
19 as defined in s. 631.011(21)~~(17)~~may proceed under s. 631.191
20 after the order of liquidation is entered;

21 Section 15. This act shall take effect July 1, 2001.
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HOUSE SUMMARY

Creates the "Insurers Rehabilitation and Liquidation Act." Specifies application of receivership proceedings to specified persons and entities. Provides for tolling time limitations in receivership actions. Entitles the estate of an insurer injured by willful violations of stays to actual damages and additional sanctions. Vests the Department of Insurance with rights as receiver in receivership proceedings. Includes the department's in-house staff and staff attorney's expenses, costs, and salaries in costs and expenses entitled to be recovered by a receiver who is successful in establishing a claim. Provides for investigations by the department preliminary or incidental to receivership proceedings, prohibits hindering or withholding information from the department in such investigations, authorizes the department to provide information in such investigations, and grants the department discretionary powers in determining information necessary to such investigations. Imposes liability on persons or entities engaged in insurance business for willfully embezzling, abstracting, purloining, converting, or misappropriating assets or property and specifies amounts of damages. Provides procedures and requirements for closing an estate, provides for depositing estate assets into the Closed Estate Fund Trust Account, and provides for uses of such account. Provides criminal penalties for making false entries of a material fact in books, reports, or statements relating to insurer transactions or knowingly making a material false statement or report to the Department of Insurance or knowingly and materially overvaluing property in a document or report provided to the department. See bill for details.